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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4303 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TEXTILE LABOUR ASSOCIATION

Versus

UNION OF INDIA

Appearance:

MR DS VASAVADA for Petitioner

MR ANANT S DAVE for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/06/2001

ORAL JUDGEMENT

The present petition is filed by the Textile Labour Association, Ahmedabad for the reliefs that insertion of the condition regarding closure of the textile unit in the policy entitled Textile Workers Rehabilitation Fund Scheme bearing no.1(9)/91-- CSS/ 41

dated 1.5.1991, be declared as discriminatory, arbitrary and offending Articles 14 and 16(1) of the Constitution of India. Said condition reads as under:

"II. Eligibility.
i) Textile units:

This scheme applies to such textile unit which is either licensed under Industries (Developing & Regulations) Act, 1951 or registered with the Textile Commissioner as medium scale unit. Secondly such unit should have been completely closed (meaning that its production would have come to a complete grinding halt) after 5.6.1985. Thirdly, in addition such a unit should have been declared as closed unit under section 25(O) of the Industrial Disputes Act, 1947 or alternatively an Official Liquidator was appointed under Companies Act, 1956 in the process of winding up of the unit. Fourthly, an illegal strike by workmen as defined in the Industrial Disputes Act, 1947 leading to the closure of the mills either under section 25(O) of the said Act, 1947 or by an order of the High Court upon which an Official Liquidator is appointed would not entitle the workers to relief under the scheme.

The benefit of the scheme shall not be extended to the workers who were not on the rolls of the mills at the time of closure."

It is also prayed in the petition that the said condition should be struck down and the employees of the Continental Textile Mills Ltd. should be paid the benefit under the aforesaid scheme.

2. Mr.D.S. Vasavda, learned advocate appearing for the petitioner submitted that the Continental Textile Mills Limited, which was engaged in production of textile fabrics was employing 2200 workmen and the unit was closed down in February 1992, without obtaining permission from the Commissioner of Labour. He asserted that the unit is completely closed rendering 2200 workmen jobless and as on today, they are suffering from the agony of starvation. Mr.Vasavda, learned advocate also submitted that the Commissioner of Labour, Gujarat State has addressed a communication to the Regional Textile Commissioner, having his office at Bhadra, Ahmedabad, that the unit has been closed down without obtaining prior permission as required under sec.25(O) of the

Industrial Disputes Act. A copy of said communication is produced at Annexure 'B' to the petition. Mr.Vasavda also invited attention to the order dated 31.1.2000 passed by the Division Bench in Civil Application No.12470 of 1998 in Letters Patent Appeal No.1584 of 1998, a copy of which is produced at Annexure 'C' to the petition. He further pointed out that the Labour Court had issued a certificate amounting to Rs.22 crores showing the dues of workers towards wages but as the same was not executed by the Collector, the Division Bench of this Court was required to pass the order referred hereinabove, in a Civil Application in Letters Patent Appeal. Mr.Vasavda submitted that by an order dated 31.1.2000 the Collector was directed to take appropriate steps to see that the amount is recovered as arrears of land revenue to make payment of wages to the workers. He submitted that it is clear from the order that, "the said unit has come to a grinding halt", these words are sufficient to infer that there are no chances of that unit getting restarted in future. Therefore, the unit is to be treated as closed for all purposes. Mr.Vasavda submitted that in the scheme under clause II(i) it is provided that,

".. .. Thirdly in addition such a unit should have been declared as closed unit under section 25(O) of the Industrial Disputes Act, 1947 or alternatively an Official Liquidator was appointed under the Companies Act, 1956 in the process of winding up of the unit. Fourthly, an illegal strike by workmen as defined in the Industrial Disputes Act 1947 leading to the closure of the mills either under sec.25(O) of the said Act 1947 or by an order of the High Court upon which an Official Liquidator is appointed would not entitle the workers to relief under the scheme.

.. .. .. "

3. Mr.Vasavda, learned advocate further submitted that in the present case though the unit is closed for all practical purposes, only because winding up proceedings are not filed in the court having jurisdiction, the employees of the Mill company are denied benefits of the aforesaid scheme for no fault on their part. Mr.Vasavda also submitted that the unit has also not applied for permission under the relevant provisions which again cannot be attributed to the employees who are deprived of the benefits under the scheme. Mr.Vasavda submitted that if the condition

contained in "Eligibility" clause of the scheme is to be implemented in its letter rather than in its spirit, the same will result into gross injustice to the employees. The employees will be deprived of the benefits of the scheme, which is formulated with the sole purpose of giving benefits to the employees of such units which are closed after 5th June 1985. Mr.Vasavda submitted that the spirit of the condition referred to can be appreciated only in one manner and that is the manner which is suggested by him. Mr.Vasavda submitted that the object of putting the condition that, "the unit should have been declared as a closed unit under sec.25(O) of the Industrial Disputes Act", is that without exploring the chances of revival of such closed unit, the employees may not be considered eligible to get the benefits of the scheme. In the present case when "the unit is closed for all practical purposes", to stand to the technicality of declaration of the unit as a closed one under sec.25(O) of the Act will frustrate the object of the scheme. The benefits which are otherwise to be given to the employees of such unit will not reach to them.

4. Mr.Vasavda invited attention of this Court to a judgement dated 11.12.1998 in Writ Appeal No.21266 of 1997 rendered by the Karnataka High Court in the matter of Shree Shankar Textile Mills Ex Employees Union, Davangere v. Union of India and others, a copy of which is produced at Annexure 'D' to the petition, wherein the facts were that the unit was closed from 9.10.1984, i.e. from a date prior to the cut off date prescribed under the policy, i.e. 5.6.1985. However, the closure of the unit was approved under sec.12(3) of the Industrial Disputes Act, 1947 on 30.5.1986. The Karnataka High Court taking the said date to be a date of closure, i.e. 30.5.1986 directed by a writ of mandamus to extend the benefits of the Textile Workers Rehabilitation Fund Scheme to the workers who were the members of the petitioner association before that Court with all consequential benefits including monetary benefits, if they are otherwise eligible.

5. The Honourable Court was pleased to observe that two conditions imposed for claiming relief under the above said scheme framed by the Central Government are discriminatory in character and the said relief is to be extended even in respect of the units which are closed under sec.12(3) of the Industrial Disputes Act, 1947, to achieve the above said object with which the scheme has been framed.

6. Mr.Vasavda has also produced at Annexure 'E' to the petition, a copy of the judgement of the Division Bench of the Karnataka High Court, which affirmed the judgement of the learned Single Judge. Mr.Vasavda pointed out that in para 10 of the affidavit in reply filed on behalf of respondent no.2, herein it is stated that the judgement of the Division Bench of the Karnataka High Court is pending before the Apex Court being SLP (Civil) No.16133 of 1999. Mr.Vasavda submitted that said pendency, before the Apex Court has no bearing on the aspect which he wants to rely upon from the aforesaid two judgements. He submitted that in the matter before the Karnataka High Court, the closure of the unit was from 9.10.1984, i.e. a date prior to the date provided as cut off date in the scheme. He submitted that he is relying upon those two judgements only to show that in both these judgements the Karnataka High Court has held that the conditions in the scheme are discriminatory in character. The same is required to be quashed by this Court. Mr.Vasavda submitted that in the present case when the authorities are trying to apply condition in its letter and not in its spirit, it amounts to giving discriminatory treatment between the two units. To that extent such application of a condition of the scheme is required to be quashed by this Court.

7. Mr.Vasavda also submitted that in the present case, the closure is since 2.2.1992 and by now 9 years have passed by; therefore, there is no question of having any probability of revival of the unit. Not only that Mr.Vasavda submitted that by judgement dated 8.3.1999, the Division Bench while disposing of Letters Patent Appeal No.77 of 1999 had given the following directions:

> "2. Looking to the nature of the property, when the Collector is exercising his powers he may require to give public notice and he may require to hear objections as well. In view of this, there cannot be any time bound programme. Therefore, the direction would be that the benefit of the certificate will be given to all the workmen and the Collector shall do the exercise as early as possible. It goes without saying that the Collector, while proceeding in the matter, shall strictly follow the procedure laid down under the Bombay Land Revenue Code. The order passed by the learned Single Judge stands modified accordingly."

The Division Bench while passing the order dated 31.1.2000, had taken into consideration the aforesaid

order in para 10 of its order and has observed in para 12 as under :

".. .. On overall view of the matter, we are of the opinion that the interest of justice would be served if the Collector is permitted to effect recovery of the amount due mentioned in different certificates having regard to the facts of the case. We are of the view that grant of interim relief as prayed for in para 3(A) of the Application is not warranted in the facts and circumstances of the case. The application therefore, cannot be granted and is liable to be dismissed. The application, therefore, fails and is dismissed. Ad interim relief granted earlier is hereby vacated. Rule is discharged with no order as to costs. It is clarified that the Collector shall effect the recovery of the amount due in terms of directions of the Court contained in Letters Patent Appeal No.77 of 1999 which was disposed of by judgement dated March 8, 1999."

8. Mr.Vasavda submitted that from this it is to be inferred that this was nothing but an order under sec.25(O) of the Industrial Disputes Act. Mr.Vasavda submitted that from the aforesaid order and the observations of the Division Bench of this Court, the appointment of the Collector for recovering the amount due in terms of the directions of the Court can be equated with the appointment of the Official Liquidator.

9. In the result, the petition is allowed. The condition regarding closure of the textile unit under sec.25(O) of the Industrial Disputes Act, 1947 is held to be discriminatory, arbitrary and offending to Articles 14 and 16(1) of the Constitution of India. The respondent is directed to pay benefits of Textile Workers Rehabilitation Fund Scheme to the workers of the Continental Textile Mills within six months from the date of receipt of writ of this judgement.

(Ravi R. Tripathi, J.)

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